IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1243 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHERBANU W/O HAJIBHAI AHMEDBHAI MOVER (MIYANA)

Versus

COMMISSIONER OF POLICE

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Appearance:

1. Special Civil Application No. 1243 of 2002

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MR D.P. JOSHI, AGP for Respondent State

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 18/02/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 23rd October, 2001 passed by the Commissioner of Police, Ahmedabad City, Ahmedabad in exercise of power under Section 3 of the PASA Act. The

petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered three registered offences against the detenu under the Bombay Prohibition Act. The detaining authority recorded a satisfaction that the petitioner is required to be immediately prevented from pursuing her illegal and anti-social activities and resorting to less drastic remedy under ordinary law is not possible as immediate prevention is necessary and therefore, passed the order in exercise of powers under Section 3 of the PASA Act.

3. Learned Advocate for the petitioner has mainly contended that there is improper exercise of power under Section 3 of the Constitution of India, as the satisfaction recorded by the detaining authority about the immediate need of detaining the petitioner for preventing her from pursuing her illegal and anti-social activities cannot be considered as genuine as there was no basis therefor. To support this contention, she submitted that the detenu was in Police custody when the order was passed. The detenu had not applied for bail at that point of time. Only on presumption that she may apply and may get bailed out the detention order is passed. According to her this is not permissible and this would vitiate the order of detention. She has relied on the decision of the apex Court in Amritlal and ors. Vs. Union Government, reported in AIR 2000 SC 3675 and submitted that the petition may be allowed.

4. Learned AGP Mr. Joshi has opposed to this petition.

5. Having regard to the contentions raised before this Court it is very clear from palin reading of the grounds of detention that when the order of detention was passed the detenu was in Police custody. The observation of the authority that she may apply for bail and may get bail and then pursue her illegal activities, is without any basis. In this regard, decision relied upon by Mrs. Kachhvah could profitably be relied. It would squarely apply to the facts of the present case. The power exercised by the detaining authority in the instant case would therefore get vitiated for the reason that because the detenu was in Police remand there was no question of her pursuing her illegal activities and consequently, there was no immediate need for detaining him under PASA.

There is a difference between getting bail and applying for bail. There is absence of material even to indicate that the petitioner had applied for bail. Under the circumstances, the petition deserves to be allowed and the same is allowed.

6. The petition is therefore, allowed. Order of detention dated 23.10.2001 passed by the Commissioner of Police, Ahmedabad City, Ahmedabad is hereby quashed and set aside. Detenu Sherbanu W/o Haji Ahmedbhai Moner (Miyana) be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas